



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/145940

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 09, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied Petitioner's request for disability-based Medicaid (MA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: DDB file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On July 19, 2012, Petitioner filed an application for disability-based Medicaid, asserting that her HIV infection causes her so much fatigue that she is unable to work. (DDB file; Petitioner's testimony)
3. On August 6, 2012, Petitioner filed an application for Social Security Disability Income (SSI) with the Social Security Administration (SSA). Petitioner's application asserted impairments due to HIV, Hepatitis B and a heart condition. (DDB file)

4. On September 17, 2012, the SSA found Petitioner to be NOT disabled, after considering the impairments alleged in Petitioner's SSI application, an impairment due to Minor Motor Seizures and Petitioner's complaint of foot pain/diagnosis of calluses on the heels . (DDB file)
5. On September 21, 2012, the DDB sent Petitioner a notice informing her that her application for disability-based Medicaid had been denied. (Id.)
6. Petitioner filed a request for Reconsideration on November 2, 2012, asserting that the calluses on her feet caused her so much pain that she cannot stand for long periods of time. (DDB file; Petitioner's testimony)
7. On December 10, 2012, the DDB again denied Petitioner's request and on December 13, 2012, it forwarded her file to the Division of Hearings and Appeals for review.

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for SSI benefits within a month of her application for MA/Medicaid and her application for SSI benefits was based upon the same disabling conditions listed in her application for MA/Medicaid. The SSA denied Petitioner's request for SSI benefits within 12 months of her application for MA/Medicaid. Petitioner's condition has not changed since she was denied SSI Benefits on September 17, 2012. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability -based Medicaid benefits.

Petitioner should note that if her conditions worsen, if more medical information becomes available or if the SSA grants her SSI benefits upon reconsideration, she can reapply for MA benefits.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

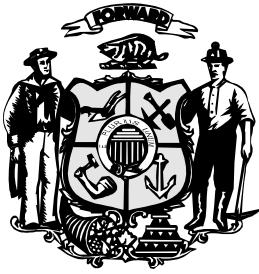
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of January, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 14, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau